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Report of the Special Rapporteur on minority issues on her mission to Sri Lanka

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on minority issues on her mission to Sri Lanka from 10 to 20 October 2016.

In her report, the Special Rapporteur commends the National Unity Government established in January 2015 for many of its reform initiatives and positive practices to promote good governance and national reconciliation. To achieve peaceful coexistence after the long and devastating civil war, a comprehensive, well-planned and well-coordinated truth, reconciliation, healing and accountability process must take place. While such goals cannot be accomplished overnight, the Special Rapporteur notes the mounting frustrations about the pace of progress. It is important for the Government to seize the momentum and put in place some immediate and concrete measures to clearly demonstrate its political will and commitment to better protect the country's minorities. Particular attention should be paid to effective participation of minorities in decision-making, equality in access to economic and social opportunities and the constructive development of practices and institutional arrangements to accommodate ethnic, linguistic and religious diversity within society. For the reconciliation and the good governance initiatives to succeed, there is also a need for all Sri Lankans to come together and regenerate trust at all levels of society. While addressing the past and ensuring accountability, a conscious effort to strengthen the Sri Lankan identity and the notion of nationhood is critically needed to foster a stronger sense of belonging and togetherness on the part of all Sri Lankans.

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* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on minority issues visited Sri Lanka between 10 and 20 October 2016. She wishes to thank the Government for its cooperation and for the importance that it attached to this visit. The Special Rapporteur was provided with extensive access to government institutions relevant to her mandate, many at the highest level. This included mechanisms established by the current administration as part of its "good governance" agenda, including the Office of National Unity and Reconciliation, the Secretariat for the Coordination of the Reconciliation Mechanisms, the Taskforce on National Consultations and the Inter-Religious Council. She also consulted with the National Human Rights Commission, political party leaders and provincial authorities, as well as the commander of the security force in Jaffna.

2. The Special Rapporteur visited Colombo, Jaffna, Vavuniya, Trincomalee and Kandy. She met persons representing the communities of Sri Lankan Tamils and Plantation Tamils (also known as Indian or Up-Country Tamils), Muslims, Hindus, Christians, including Catholics and members of other, smaller denominations, Telugus, Veddas, Burghers, Malays and Sri Lankan Africans. She also met with Sinhalese Buddhist leaders and those who identify as majority, to seek their views. She thanks all the representatives of civil society organizations, community members, religious leaders and academics who provided information to her and facilitated aspects of her visit.

3. Like most multi-ethnic and multi-religious polities, Sri Lanka is characterized by relations of coexistence and interdependence as well as tensions and differences between different ethnic and religious groups. Historically, ethnic and religious identities have defined power and social relations, leading to tensions and social divisions between the majority and minority communities as well as between minorities. These long-standing grievances, and the failure of successive Governments to effectively address them, precipitated conflict and, eventually, a long civil war that seriously damaged the social fabric of the country.

4. The country's ethno-religious profile is often described in terms of a simplified dichotomy: two ethnic groups with two distinct geographical boundaries — the majority Sinhalese and the minority Tamils. However, the reality is far more complex. Ethnicity, language and religion intersect and create the rich mosaic of Sri Lankan identities, which are often multiple and multilayered.

5. According to the 2012 census, Sinhalese make up 74.9 per cent of the population of 20 million. The Sinhalese are predominantly Buddhist, with some belonging to the minority Christian community. Tamils make up the largest minority group in Sri Lanka, with two distinct groups numbering some 3.1 million in total. The "Sri Lankan Tamils" live predominantly in the North and East of the island, forming approximately 11.2 per cent of the population. Another group of Tamils are the "Indian Tamils", also known as "Plantation" or "Up-Country" Tamils, the descendants of Indian Tamils brought by the British as indentured labour to work on plantations; they comprise 4.1 per cent of the population. The majority of Tamils are Hindu, with the remainder belonging to Christian denominations. The Muslim community, most of whom descend from Arab Moorish traders, form the third largest ethno-religious group at 9.3 per cent of the population. They are concentrated mainly in urban areas in the southern parts of the country, with substantial populations in the Central and Eastern provinces. Smaller minorities include the Malays, who are descendants of South-East Asian settlers, and the Burghers, who are descendants of Europeans; both groups number 0.2 per cent of the population. The Sri Lankan Africans (also known as Ceylon-Africans or "Kaffirs") are descendants of Africans brought as slaves, soldiers and labourers in the seventeenth century. While they once spoke Portuguese Creole,

now most speak Sinhalese and Tamil. Chetties, who are descendants of a community of Indian traders, comprise 0.03 per cent of the population. Bharatha, originally from Tamil Nadu in India, constitute 0.01 per cent of the population. The census also provides for the category of "other", which covers the 0.09 per cent of the population who do not identify themselves as falling within the aforementioned categories.

6. Many minority representatives questioned whether the 2012 census data truly reflect the actual composition of the society, where categories overlap. The implications of undercounting may be considerable, particularly in view of the proportional representation system. The category of "other", as pointed out by smaller minority groups, is problematic, given that they are not provided with the opportunity to self-identify and to have a separate voice under the proportional representation system. According to the Department of Census and Statistics, consideration is being given to the possibility of allowing for self-identification in the next census. The Special Rapporteur would welcome such a step.

II. Minority rights: legal, political and institutional framework

7. Sri Lanka is a State party to the core international human rights treaties of particular importance to the rights of minorities, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and others.

8. The 1978 Constitution establishes the principle of equality and non-discrimination under its article 12 (2), which contains general provisions prohibiting discrimination on the grounds of race, religion, language, caste, sex, political opinion and place of birth, though not on the basis of colour or national or ethnic origin.

9. Article 9 establishes that "the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by articles 10 and 14 (1) (e)". Article 10 stipulates that "[e]very person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice". Article 14 (1) (e) states that "[e]very citizen is entitled to the freedom, either by himself or in association with others and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching".

10. Problematic in terms of constitutional provisions affecting the private practice of religion, as explained below, are article 16 (1), stipulating that all written and unwritten laws that existed prior to the 1978 Constitution are "valid and operative", and article 80 (3), which prohibits judicial review of acts once adopted by Parliament. Article 18 establishes Sinhala and Tamil as the official languages, with English as the "link language", and article 19 establishes Sinhala and Tamil as the national languages. Article 20 states that a Member of Parliament or of any local government authority is entitled to perform his functions in any of the national languages, and article 21 (1) guarantees the right of an individual to be educated through the medium of either of the national languages. Subsequent articles (22, 23 and 24) provide for the use of Tamil "as the language of administration for the maintenance of public records and the transaction of all business by public institutions in the Northern and Eastern Provinces". All proclamations, by-laws and official publications are to be published in both languages, and all laws must be published in Sinhala and Tamil with a translation into English. Tamil is the language of the courts exercising original jurisdiction in the Northern and Eastern Provinces.

11. Further to the fifteenth amendment, the Constitution establishes in its article 99A that the Commissioner of Elections would ensure "as far as practicable" that the

representation of all communities, "ethnic or otherwise", in the election of Members of Parliament is commensurate with its national population ratio.

Constitutional reform

12. The National Unity Government established at the beginning of 2015 enjoyed the support of most communities and brought new hope for reconciliation and progress, promising an ambitious set of constitutional and governance reforms. The nineteenth amendment to the Constitution, adopted on 28 April 2015, lessened the powers of the executive presidency that had been in place since 1978, revived the Constitutional Council and strengthened the independent commissions. On 9 January 2016, a resolution was tabled for the Parliament to sit as a constitutional assembly to consider proposals for constitutional reform. The Public Representations Committee on Constitutional Reform was appointed by the Prime Minister to gather public opinion on the constitutional reform. The Committee's recommendations were submitted in May 2016 in a report to the Cabinet Subcommittee on Constitutional Reforms.

13. The importance of guarantees for the inclusion of provisions protecting minority rights featured prominently in all discussions concerning the constitutional reform. A majority of those consulted expressed fears that retaining the primacy of Buddhism in the Constitution could lead to further suppression of and discrimination against minority religions and communities. Others stated that they did not object to the preservation of this clause as long as specific non-discrimination guarantees were also built into the Constitution to prevent the potential misuse and misinterpretation of article 9. Article 16, relevant to personal laws, was cited as especially problematic and harmful for Muslim women, who argued that it should have no place in the new Constitution.

Transitional justice

14. Under way in parallel to the constitutional reform process is the transitional justice process following the co-sponsorship by Sri Lanka of Human Rights Council resolution 30/1, in which the Council emphasized the importance of a comprehensive transitional justice approach on the basis of the four pillars of non-recurrence, right to truth, right to justice and reparations.

15. The Government has established the Office for National Unity and Reconciliation as well as the Secretariat for Coordinating Reconciliation Mechanisms, which has begun, through its Consultation Task Force on Reconciliation Mechanisms, nationwide public consultations on the mechanisms to be established for reconciliation.

National human rights commission

16. The Human Rights Commission of Sri Lanka was established in 1996. The independence and integrity of the Commission were severely compromised under the previous regime; however, its credibility was finally restored in May 2015 with the adoption of the nineteenth amendment, which ushered in new leadership and members on the advice of the Constitutional Council. However, the Commission continues, to face challenges, including inadequate financial, physical and human resources, as well as insufficient staff training and expertise.[1] Institutional resistance from government entities,

[1] See http://hrcsl.lk/english/wp-content/uploads/2016/07/Draft-Strategic-Plan-2016-2019-of-HRCSL-English.pdf.

including the police, as well as the absence of enforcement powers to ensure that final determinations and recommendations are implemented are additional obstacles.[2]

III. Overall challenges for minorities

A. Governance and political participation

17. The current administration must be commended for taking progressive steps to include the voices of the general public in the ongoing reform processes. Both the Public Representations Committee on Constitutional Reform and the Consultation Task Force on Reconciliation Mechanisms have reached out and listened to thousands across the country.

18. The unprecedented level of public participation in this exercise has created a great deal of hope. However, for this momentum to be maintained, the public should be kept regularly informed of developments at all stages of the process. The sense that minorities are generally excluded from most areas of decision-making and power structures was pervasive. Among the many challenges and issues raised, one underlying root cause of all grievances was the inadequate levels of minority participation and representation in major institutions and decision-making bodies and the resultant frustration with systemic social and political marginalization. The dominance of the Sinhalese and Sinhala as the de facto sole language in these bodies were cited as a major hindrance to minority participation. The Special Rapporteur also heard that civil society participation in governance matters is only possible for those who have personal connections. Additionally, it was evident that the ethnicization of politics, and the polarized environment that is prevalent at every level of governance are not conducive to the protection and promotion of minority rights. In such a polarized and adversarial political environment, political dialogue and negotiation become extremely difficult, as each (majority and minority) community may push for ethnically biased and manipulated political agendas and prioritize them at the expense of the ordinary citizens' interests.

19. While the idea of community participation and inclusive governance seem to have gained currency in limited circles in Colombo, particularly among those that are driving the reform and reconciliation agenda, it is clear that the rest of the country has yet to overcome the various impediments that are the result of decades of non-participatory governance. To fulfil promises of good governance, it is crucial that all institutions are reflective of the society's ethnic, linguistic and religious diversity.

B. Linguistic rights

20. The various language policy changes made by successive administrations historically contributed to the ethnic tensions that exist today. The introduction of the 1956 Official Language Act, which declared Sinhala as the only official language, is said to have been the most devastating of all, fortifying the existing grievances and the ethnic and linguistic divide that eventually triggered the civil war.

21. The Special Rapporteur was informed that previous and current administrations have begun taking important steps to promote multilingualism, including the Official Languages Law and the National Trilingual Policy (2012-2020), which aim at the equal promotion of Sinhala, Tamil and English. Learning of a second language (Sinhala or Tamil) has been made compulsory up to the ninth grade. Moreover, a State policy in the form of a circular

[2] Ibid.

requires State employees to learn a second language (Sinhala or Tamil), which is also linked to incentives.

22. However, in reality, minority representatives reported systemic challenges with respect to the use of the Tamil language, particularly in the public domain. With the exception of the capital and the Tamil-dominant North and East, most signs and administrative forms are reportedly in Sinhala only. Many of the Tamil-speaking representatives, including Muslims in the North and East, highlighted the difficulties of not being able to use Tamil when dealing with State institutions, including provincial and local authorities, the police and the hospitals. The Special Rapporteur was informed that most State institutions across the country use only Sinhala in oral and written communications. This language gap often places Tamil speakers at a significant disadvantage with respect to employment and access to services.

23. Similarly, law enforcement officers and members of the military deployed in Tamil-speaking areas often lack Tamil language skills, widening the gap further between majority and minority communities. For instance, despite the establishment of Children and Women's Bureau Desks at local police stations, minority women reported difficulties owing to language barriers. Those who have suffered domestic violence, for example, not only need to gather courage to go and make a complaint but also face the challenge of explaining it in a language they do not command, which leads to further reluctance to report such violations.

24. Language-related concerns also featured in discussions about education. The Special Rapporteur was informed that the school system remains highly segregated along linguistic and ethnic lines, whereby Sinhalese students attend Sinhalese language schools and Tamils and Tamil-speaking Muslim students attend Tamil language schools. With the notable exception of private institutions that use English as the medium of instruction, Sinhala- and Tamil-speaking students rarely have the opportunity to learn together, even in mixed schools in urban areas or universities, owing to the separate Sinhalese and Tamil streams.

25. Moreover, the Special Rapporteur learned of the serious shortage of quality and professional language teachers in the schools, where an additional 6,000 language teachers are reportedly needed. This is of particular concern in mixed regions and the so-called border villages, where the choice of schools is limited and education in the mother tongue is often not available.

26. Many of the representatives of smaller minorities, including Telugus, Malays and Veddas, expressed their desire to have opportunities for their mother tongue to be taught and transmitted to the next generation, fearing that their languages might otherwise completely disappear from Sri Lanka.

C. Religious freedom

27. According to the 2012 census, the overwhelming majority (70.1 per cent) of the population is Buddhist and, as mentioned above, Buddhism is given primacy in article 9 of the Constitution. During public consultations on the constitutional reform, discussions about the possible amendment of article 9 featured prominently.

28. In many places, there is peaceful coexistence among different religious groups, temples, churches and mosques are constructed without hindrance and religious services are enjoyed without discrimination or harassment. The Special Rapporteur welcomes the establishment of the Inter-Religious Council under the President with the participation of religious leaders from many different religions, with the mandate to increase society's understanding of and respect for other religious systems and institutions and serving as a platform for discussions, mediations, general peacebuilding, planning and advising.

29. However, challenges remain in relation to minority religious groups. The Special Rapporteur was informed about difficulties in obtaining new places of worship and accessing cemeteries, especially for members of smaller Christian and Muslim denominations. It appears that article 9 of the Constitution, as well as the non-statutory government circular issued in 2008 by the Ministry of Buddha Sasana and Religious Affairs, are sometimes used to the detriment of other religions, including as the basis for arbitrarily denying applications for construction of places of worship. At the same time, construction of Buddhist temples, shrines and statues in areas that were traditionally non-Buddhist is met with animosity.

30. Many expressed grave concern about Sinhala-Buddhist nationalism and extremism, which gained particular force under the previous Government. Groups such as the Bodu Bala Sena (Buddhist Power Force) incited violence and hatred against religious and other minorities while proclaiming the racial superiority of Sinhala Buddhists and carried out attacks on places of worship as well as businesses and properties of religious minorities, including Muslims and Christians. The most notable of such incidents was the Aluthgama riots in June 2014 when mobs were said to have been mobilized by the Bodu Bala Sena to attack Muslim homes and properties following a minor traffic incident, leaving 4 Muslims dead and 80 injured. For more than six days, more than 6,000 people were reportedly trapped and left to starve in mosques. Regrettably, there has yet to be a credible investigation and effective prosecution following the incident.

31. While the Special Rapporteur was informed that the incidence of violent crimes motivated by religious intolerance has significantly decreased since the new Government took office, civil society groups continue to report incidents of destruction of religious property and harassment of religious leaders. She was told by Christian as well as Muslim groups that in dealing with these cases, the police as well as the courts continue to ignore the motives — religious intolerance or hatred — behind such attacks and refuse to consider them as aggravating circumstances, thus failing to send a clear signal that they will not be tolerated. Many also reported that political patronage of religious leaders or politicians are often in the way of prosecution for these crimes, effectively contributing to a climate of impunity. Lack of accountability increases the likelihood for further violations.

32. The Special Rapporteur is also concerned that hate speech, though also less prevalent since the change of Government, continues to plague Sri Lankan society. She echoes the concerns expressed by the Office for National Unity and Reconciliation about the rise in recent months in hate speech and joins in urging the relevant authorities to take appropriate action against all such incidents, regardless of the social status, ethnicity, religious background or political affiliations of the perpetrators.[3]

33. Such aggression and extremism must not be allowed or tolerated, particularly in a society that is already significantly fragmented and is seeking to re-establish long-lasting peace and harmony. Most Sinhalese Buddhist interlocutors noted that extremists represent a very small segment of the society and that the majority of Buddhists adhere to the key principles of Buddhism: tolerance, non-violence and non-discrimination.

IV. Minorities and post-conflict issues

34. The legacy of the decades-long conflict in Sri Lanka continues to be a challenge, particularly in the North and East, which were most acutely affected in the last phases of the war. Although the post-conflict issues found in these regions, such as militarization,

[3] See www.onur.gov.lk/index.php/en/news.

displacement and rehabilitation, are often understood as predominantly Tamil issues, the plight of the Muslim minority, which also faced tremendous and distinct challenges, has often been neglected. There are also significant numbers of Indian Tamils who were uprooted by ethnic riots in the plantation areas and displaced, mostly to the East, and who also found themselves caught in the crossfire during the conflict. In the view of the Special Rapporteur, any attempt to deal with these post-war issues simply in terms of a "Tamil solution" would therefore be short-sighted.

35. Even seven years after the end of the war, an overwhelming proportion of the Sri Lankan military is still based in the North and East. The continued presence of the military in these parts of the country is a subject of some controversy. The Special Rapporteur was informed about several projects by the army that aim to improve the social and economic situation of the northern communities, including construction of houses for the displaced as well as income-generation activities in civilian service work.

36. The army maintains that a significant scaling down of its presence has already taken place and will continue. According to the army, 21,134 acres of land have been released to date and 6,124 acres are left to be returned. The figures are contested. In the meantime, the army maintains that its continued presence is required for the reconstruction of these regions, given that there is no civilian entity with the required capacity. The Chief Commander in Jaffna stated that the transfer of power to the police should take place within two to three years. Indeed, people reported that under the new Government, the army has become less visible in public places; however, it was clear that the military presence is still seen as having a negative effect in many spheres of life.

37. Land and livelihood featured prominently in the discussions. Much of the land belonging to civilians that was confiscated during the conflict by the military to establish high security zones continues to be occupied by the military. This includes residential areas, farmland and fishing areas, many of which are of critical importance to the livelihoods of the population, which is made up predominantly of farmers and fishermen. Many also expressed concern about the commercial activities undertaken by the military, with which the local population is unable reasonably to compete, threatening their livelihoods further.

38. For the minorities in the war-affected areas, the rehabilitation process must include demilitarization. More than just land and livelihood are at issue: the continued presence of the army also has symbolic value, with the army's ethnic make-up being almost entirely Sinhalese and its disproportionately heavy presence in the Northern Province, the military is seen as an occupying force that is believed to be continuing to stigmatize Tamils as militants. Furthermore, the prevailing climate of impunity for the crimes and violations committed during the war, which has yet to be addressed, has clearly had a deep social and psychological impact on the minority populations. It must be recognized that the presence of the military — no matter how well-intentioned — has an adverse impact in a region where that presence is not at the request of the people living in the area but is contrary to the wishes of the local population.[4]

39. In the meetings with minority representatives in the North and East, the Special Rapporteur was struck by the frequency with which they referred to the "Sinhalization" of their regions, with significant degrees of animosity and distrust. Many alleged systematic, government-sponsored movements of Sinhalese settlers to the Tamil-speaking areas that are intended to change the demographics of the region, to the political disadvantage of the minorities. They spoke of the military-assisted construction of Buddhist statues and temples

[4] Nimmi Gowrinathan and Kate Cronin-Furman, *The Forever Victims? Tamil Women in Post-War Sri Lanka*, White Paper, Colin Powell School for Civic and Global Leadership, The City College of New York, 25 August 2015, sect. 2.

in areas that have no Buddhist population; new Sinhalese settlements with facilities appearing suddenly; and State confiscation from Tamil owners of land for development or conservation. It is clear that the fear of this real or perceived deliberate population change is inherently tied to governance issues, including devolution of powers, but it also illustrates the extent to which the minorities view the Sinhalese majority as a threat to their ethnic, religious, cultural and political identity.

Social fragmentation and psychological impact of the conflict

40. While people of the war-affected areas struggle with their day-to-day livelihood challenges, another post-conflict issue that remains largely unaddressed is the psychological impact the conflict has had on the communities collectively and individually. Those in the North and East who were directly affected by the war in its last stages — whether they were Tamils or Muslims, combatants or civilians — witnessed, or were victims of, grave violations of international human rights and humanitarian laws by both the government forces and the Liberation Tigers of Tamil Eelam (LTTE), including extrajudicial killings, torture and enforced disappearances, as well as suffering loss of loved ones and multiple displacements. Numerous studies show that psychosocial disorders in the population in the war-affected areas, including post-traumatic stress disorder, anxiety disorder, major depression, alcohol abuse and dependence and substance abuse disorder, are prevalent.[5] Seven years on, these scars remain largely unaddressed, with little psychosocial assistance provided to the victims and their families. The result is "a complete breakdown of social networks, breakdown in social capital and loss of social cohesion, the feeling of being part of a community is gone. A rise in alcoholism … coupled with a general sense of powerlessness …. Family relationships have destabilised."[6] Domestic violence, including child abuse and gender-based violence, elder abuse and neglect, suicide and attempted suicide are all reportedly on the rise.

Search for truth and accountability

41. As at 18 May 2016, there were 5,758 outstanding cases of enforced disappearance in Sri Lanka with the Working Group on Enforced or Involuntary Disappearances. While most victims of conflict-era enforced disappearances and extrajudicial killings at the hands of the Sri Lankan army were Tamils, Muslims were also either killed or disappeared after being taken by LTTE.[7] Despite several successive commissions of inquiry on enforced or involuntary disappearances and missing persons, the search for truth and justice continues. The Special Rapporteur felt widespread, deep-seated frustration and anger about the lack of progress in the search for truth, compounded by the chronic pattern of impunity. While the ratification by the Government of the International Convention for the Protection of all Persons from Enforced Disappearance and the enactment of the Office of the Missing Persons Act are to be commended, it remains to be seen how effectively the transitional justice mechanisms will be able to provide redress, as well as accountability.

[5] Daya Somasundaram, "Psychosocial rehabilitation in north (sic) in a post-war context", *Sunday Times 2* (Colombo), 9 August 2015.

[6] Gowrinathan and Cronin-Furman, *The Forever Victims?*.

[7] Report of the Committee on Disappearances in the Jaffna Region of the Human Rights Commission of Sri Lanka, October 2003, pp. 18-19.

V. Specific groups of concern

A. Internally displaced persons

42. The Special Rapporteur was alarmed to hear that large numbers of communities were still living in precarious situations of displacement seven years after the war. According to the Ministry of Resettlement, Reconstruction and Hindu Religious Affairs, as at 31 August 2016, a total of 13,670 families (43,607 persons) had yet to be resettled.[8] This included 936 families (3,260 persons) in the camp known as the "welfare centre" in Jaffna, as well as 262 families (652 persons) in the welfare centre in Trincomalee. The rest were residing with host communities. With the exception of the displacement caused by the 2004 tsunami, displacement in Sri Lanka has a distinctly ethnic dimension. Even before the war, a significant number of Indian Tamils were displaced from the plantations at different times owing to ethnic strife and violence, most notably in 1983. While some 22,000 Sinhalese were reportedly displaced in the 1980s and 1990s owing to the conflict (see A/HRC/26/33/Add.4, para. 13), including those expelled by LTTE, a majority of the internally displaced population were Tamils and Muslims displaced during the conflict in the Northern and Eastern Provinces. Many of the Tamils fled to India and elsewhere.

43. One of the most harrowing episodes of displacement was the systematic expulsion by LTTE of some 75,000 (ibid., para. 10) to 100,000[9] Muslims in the North in a matter of 48 hours in October 1990. They were forced to abandon their belongings, and most went to Puttalam, where they lived in camps for decades. Today, less than 20 per cent of the Muslim internally displaced are said to have been resettled, and the number of Muslims who continue to live in displacement camps is said to be as high as 33,974.[10] This is attributable to the long-standing neglect by successive Governments, as well as the international community, in terms of assistance for return, resettlement or other durable solution. The Special Rapporteur was told that the Muslims of the North had been deprioritized as "old" internally displaced persons by the Office of the United Nations High Commissioner for Refugees at the end of the war and excluded by the Government from the various housing schemes.

44. There are many factors that complicate the process of return or resettlement. While the land held by the military is one reason for the protracted displacement of the population in the North and East, there are other factors, such as loss of deeds or other evidence of ownership; the original land or property was destroyed or no longer habitable; and others were occupying the land or property. Civil society representatives, Tamils and Muslims alike, expressed deep frustration about the lack of transparency and accountability with respect to administrative processes to reclaim and return to their lands or to be provided with alternative solutions that met their minimum requirements.

45. While the ethnicity and the origins of those displaced may differ, it was clear that all the displaced communities suffered from similar economic and social difficulties. They uniformly find it difficult to exercise voting rights, since those rights are linked to registered, permanent addresses. Accessing education, employment and public services also presents significant challenges. Many interlocutors attributed these difficulties to discrimination on the part of the majority community in the area, including the State authorities, as well as to the absence of material or financial assistance, including for

[8] See http://resettlementmin.gov.lk/site/index.php?option=com_content&view=article&id=5&Itemid=21&lang=en, last accessed on 16 November 2016.

[9] Letter dated 19 October from the All Ceylon Makkal Congress addressed to the Special Rapporteur.

[10] Ibid.

housing, from the Government. The Special Rapporteur was also informed that protracted displacement had also led to many conflicts over scarce resources, including between and within minority groups, also owing to tensions between host communities and those displaced.

B. Minority women

46. Women and girls belonging to minority communities often face unique challenges and multiple or intersecting forms of discrimination emanating from their gender and their status as persons belonging to minorities. This is particularly acute in Sri Lanka, where women's participation in decision-making is strikingly low and gender-based violence is prevalent.

47. Women in the North and East continue to suffer from the scars of the conflict, as well as the insecurity that resulted from the subsequent militarization. In the last stages of the war and its aftermath, human rights abuses against the civilian population by both sides to the conflict were rife, including sexual and gender-based violence. The climate of impunity and the additional insecurity created by the militarization have meant that women are living with multiple challenges that threaten their freedom, dignity and security on a daily basis. While the incidence of sexual assaults by military personnel is said to have decreased with the downsizing of the army in the North and East, a climate of fear remains among the Tamil women in an area where the military presence has continued.

48. According to the latest census, approximately one in four households in Sri Lanka are headed by females,[11] and most are found in the North and East. The Special Rapporteur was told that this status is accompanied by particular vulnerabilities and social stigma that make basic survival difficult and exposes the women to further exploitation. The lack of income-generation and employment opportunities combined with high levels of debt make them vulnerable to sexual exploitation by community leaders, family members as well as the military. Women who are displaced also face particular challenges, such as claiming land belonging to their disappeared husbands, as deeds are normally in the name of the male head of household.

49. War widows and women family members of the disappeared who search for truth, justice and accountability, as well as women activists who advocate on their behalf also face particular risks. There are instances of wives and mothers of the disappeared being asked for money or sexual services in return for information. Worrying allegations of intimidation and harassment by the Criminal Investigation Division were also made, particularly in relation to former LTTE combatants. These women continue to be under heavy surveillance even today, and there were allegations of late-night phone calls and "visits". Many are unable to marry or have a family because of the social stigma and the constant harassment. Once they have undergone the official rehabilitation programme, there is no follow-up on their reintegration into society. Another concern was the vulnerable situation of women who are given vocational training and employment by the Civilian Security Department of the military in isolated conditions under the direct authority of military personnel.

50. Plantation Tamil women, despite constituting over 50 per cent of the plantation workforce, have been marginalized and excluded from decision-making on the plantations, including in trade unions. The plantation social structure is said to be traditionally patriarchal, with male domination solidified at the different social, economic and cultural

[11] See http://lk.one.un.org/news/un-round-table-discussion-on-empowering-female-headed-households-in-sri-lanka/.

levels, including managers, chief clerks, factory officers and field supervisors.[12] Gender-based violence is a serious issue in the plantation community. The Special Rapporteur was informed that many of the Sri Lankan women who migrate abroad as domestic workers who often fall victim to abuse and exploitation are women from the plantations.

51. For Muslim women, there are also pressures from within the community when asserting their rights, and many risk their lives in doing so. Muslim women activists who speak up against violence, including flogging for adultery, rape and incest, within the community are often ostracized as traitors, threatened and harassed. Their campaign with respect to matters concerning marriage and divorce that are governed by the 1951 Muslim Marriage and Divorce Act under the jurisdiction of the *quazi* (Muslim judge) court system has also been met with hostility. Unlike the rest of the population, including the Kandyan Sinhalese, who also have their own separate act, Muslims are excluded from the application of the 1907 (General) Marriage Registration Ordinance. Article 16 of the Constitution also means that Muslims are not able to seek remedy and redress for any violation of their fundamental rights under the Muslim Marriage and Divorce Act, and this is further restricted by article 80 (3), which prevents judicial review. This act, among others, allows children below the age of 16 to be married and contains discriminatory provisions concerning marriage and divorce. Reportedly, a commission set up seven years ago to look into much-needed reforms has yet to submit its report. Many also voiced frustration about the disengagement of the wider civil society on the issues affecting Muslim women, as they are seen to be "culturally sensitive" issues.

C. Tamils in the North and East

52. Reinforcing the stigmatization of the Tamil identity is the continued application of the Prevention of Terrorism Act, which affects the Tamil population disproportionately. Despite the heavy criticism it has received nationally and internationally for allowing prolonged detention without due process, the Government has reportedly continued to rely on the Act to make new arrests, including exiled Tamils returning to Sri Lanka. While the numbers are disputed (no list of detainees has been released), a significant number of persons remain in remand detention under the Act, the longest-serving for 15 years.[13] According to the National Human Rights Commission of Sri Lanka, 111 persons were in remand custody under the Act as at May 2016, 29 of whom had not been indicted.[14] The Commission notes that this figure does not take into account "a spate" of arrests under the Act that followed since then. It should also be noted that these figures do not include those persons sent for "rehabilitation" in lieu of prosecution, which is another form of arbitrary detention affecting Tamils. Allegations of torture and ill-treatment of security-related detainees continue to cause concern, although these occur with less frequency and the alleged treatment said to be less severe than in the past.[15] The Commission reported that 13 persons arrested under the Act since April 2016 have complained of ill-treatment and torture, either at the time of arrest and/or during initial interrogation following arrest. While the Government has committed to the repeal of the Act, it appears that the latest draft of the new antiterrorism legislation that would replace the Act falls significantly short of international standards, raising new concerns among the Tamil community that they will continue to be arbitrarily targeted by whatever new security framework comes into force.

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[12] A.S. Chandrabose and P.P. Sivapragasam, *Red Colour of Tea: Central Issues that Impact the Tea Plantation Community in Sri Lanka* (Kandy, Human Development Organization, 2011), p. 36.

[13] See http://hrcsl.lk/english/wp-content/uploads/2016/11/Report-to-CAT-Committee-.pdf.

[14] Ibid.

[15] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E.

D. Muslims

53. Muslims make up close to one tenth of the whole population and roughly one third in the Eastern Province. It is essential to recognize the Muslim minority as a distinct group in Sri Lanka, with a specific set of circumstances and grievances. During the war, the Muslims suffered greatly, particularly at the hands of LTTE. Intimidation, harassment, abduction and extortion were common, and many lost properties and land, as well as their lives either through targeted killings or being trapped between warring factions. Having suffered complete exclusion from successive peace talks despite having been severely affected by the conflict, Muslims feel that they have also been excluded from meaningful political representation in local and national governance since the end of the war, a situation that continues. As one representative said, "Good governance is also ignoring us". The Muslim representatives were anxious that any future electoral reform should fully and accurately ensure the proportional representation to which the community is entitled. In the ongoing reform and reconciliation efforts, it is of paramount importance that Muslims be able to be recognized in the political domain and have their voice heard.

E. Plantation Tamils

54. According to all the socioeconomic and health indicators, including access to housing, health, education, literacy, sanitation and safe drinking water, Plantation Tamils are the most deprived group in the country. Landless and employed as daily labour, they have historically lived in complete isolation and are heavily dependent on the estates for their welfare and livelihood. Some of the estates are State-run and others are private. A majority of Plantation Tamils (67.8 per cent)[15] still live in so-called "line rooms" built during the colonial era, 20 per cent of which lack latrines. The only medical facilities available are medical posts staffed by estate medical assistants who often perform as doctors without the necessary qualifications or knowledge.

55. Many Plantation Tamils were deprived of citizenship and rendered stateless under the policies of successive Sinhalese Governments, and therefore excluded from any participation in public or political life until as recently as 2003 when the Grant of Citizenship to Persons of Indian Origin Act was enacted. Many of them experience difficulties in registering to vote, as well as in obtaining basic documents such as birth, death and marriage certificates and national identity cards. This is compounded by the fact that local authorities are predominantly Sinhala-speaking. Another difficulty originates from the fact that the estate communities have not been brought under the Sri Lankan public administration system and public services cannot reach them without prior permission from the estate management. The establishment of the Ministry of Hill Country New Villages, Infrastructure and Community Development as well as a new National Plan of Action on Social Development of the Plantation Community (2016-2020) are welcome and much-needed steps.

F. Caste-affected groups

56. The Special Rapporteur observed that the caste system, the existence of which is not disputed, is evidently an uncomfortable topic for the majority of Sri Lankans. She was told that three parallel caste systems that define interpersonal relationships exist within the Sinhala, Sri Lankan Tamil and Indian Tamil communities. Additionally, some members of

[15] Information provided by the Human Development Organization, Sri Lanka.

the lower caste groups have closely ascribed status that limits them, by birth, to certain occupations that are considered the most dirty, menial and hazardous, such as manual scavenging and street sweeping, and that are passed down through generations, continuing patterns of social exclusion and marginalization. Most of these persons suffer discrimination in all spheres of life, have limited or no access to political representation and often have their children excluded from the education system, perpetuating the cycle of extreme poverty. The Public Representations Committee on Constitutional Reform stated that it had received information from "discriminated caste and menial labour groups", indicating that they faced several challenges with regard to access to services as well as to representation and development.

57. In Jaffna, where the caste system is reportedly the most rigid, the Special Rapporteur was told of deep-rooted discrimination and inherent structural inequality in all spheres of life, including employment, education, the right to own property and political representation. In Kandy, Indian Tamil scavengers in Mahaiyawa working in inner-city settlements live in the worst sanitary conditions in the city, in a slum-like settlement. Members of lower caste groups within the Sinhalese community in Welivita, Henawala and Kotagala, which are remote villages in the central region, are confined to hereditary caste occupations as scavengers, living in small groups in conditions of extreme poverty and socially ostracized. Historically, the Plantation community is said to be constituted largely of members ascribed to lower castes. Their historical exclusion from access to resources, services and development as well as political participation, which kept them in extreme poverty for generations, is attributable, at least in part, to their caste status. The patterns of migration from the rural areas of the central provinces reportedly indicate that most women migrants are from depressed caste communities. It is reported that most of those still languishing in the internally displaced camps are also persons of low caste groups.

58. While there are differences of opinion on whether caste-affected groups fall under the category of "minority groups" in Sri Lanka, it is evident that there are significant segments of Sri Lankan society that face multiple and intersecting forms of discrimination on the grounds of both their minority status and descent. Therefore, the approach taken by the Public Representations Committee on Constitutional Reform in recommending various areas of constitutional reform, to consider caste groups among the "minorities and underrepresented groups" requiring particular attention, seems to have much validity in the Sri Lankan context.

G. Smaller minority groups

59. The Special Rapporteur held a meeting in Colombo with representatives of the Burghers, Malays, Telugus, indigenous Veddas and Sri Lankan Africans, among others. With the exception of the Burghers in Colombo, common issues that featured in the testimonies were neglect and lack of inclusion in consultation and decision-making processes; stigmatization and labelling, including racial epithets, despite their self-identification (Telugus called Gypsies, Sri Lankan Africans called Kaffirs, etc.); pressure to change their traditional life styles, which was especially devastating for the Veddas; and lack of mother tongue education and opportunities to transmit their languages to the next generation. The participants expressed appreciation for a chance to come together, listen to each other and realize that their issues, concerns and aspirations, and therefore possibly the solutions, were very often the same. Many expressed the wish to have such dialogues continued. They noted that safe places of discussion, where views and ideas could be freely exchanged, were currently lacking, hindering the strengthening of intercommunal relationships.

VI. Conclusions and recommendations

60. The National Unity Government established in January 2015 must be commended for many of its reform initiatives and positive practices to promote good governance and national reconciliation. However, as a consequence of the long conflict and the prevailing culture of impunity that remains unaddressed, there is a clear trust deficit vis-à-vis the State as well as between the communities in Sri Lanka. The polarized social and political environments and divisions that cut across society through ethnic, religious and linguistic lines are key obstacles to the reform process as well as to the much-needed process of national reconciliation. Adversarial ethnicization of politics blocks progress in achieving the reform needed for the full protection and promotion of minority rights.

61. The protection and realization of the rights of minorities are instrumental not only to reduce communal tensions but are essential components of good governance. History has shown that societies in which mechanisms are in place that allow minorities to freely use their language, practise their culture and religion and participate in political and economic life on an equal footing with the rest of the population are the societies that succeed in creating lasting peace and stability.

62. Protection and promotion of minority rights and national reconciliation are not contradictory. The Special Rapporteur firmly believes that the success of the ongoing reform and reconciliation process depends on the extent to which the Government can place a minority rights regime firmly on its longer-term governance and transitional justice agenda. Particular attention should be paid to effective participation of minorities in decision-making, equality in access to economic and social opportunities and the constructive development of practices and institutional arrangements to accommodate ethnic, linguistic and religious diversity within society. Where inequalities based on ethnicity have existed, whether intentionally or de facto, corrective special measures must be undertaken to establish equal enjoyment of rights on the basis of accurate and disaggregated data.

63. For the good governance initiative to succeed, there is also a need for all Sri Lankans to come together and regenerate trust at all levels of society. While addressing the past and ensuring accountability, a conscious effort to strengthen the Sri Lankan identity and the notion of nationhood to foster a stronger sense of belonging and togetherness of all Sri Lankans is critically needed. The Special Rapporteur very much welcomes the National Policy on Reconciliation (2016) in this regard.

64. The constitutional reform and the transitional justice process present an unprecedented opportunity to address the past and shape a common vision of the future for Sri Lanka, and at the same time to build in a strong minority rights regime in the governance structure, putting in place legal and institutional guarantees for equality and non-discrimination for all. It is important that the Government present a clear vision and road map, with timelines as necessary for the implementation of these important processes in a uniform manner.

65. Mechanisms such as the Secretariat for Coordinating Reconciliation Mechanisms and the Office for National Unity and Reconciliation will undoubtedly play an important role in moving the country forward along with other existing independent commissions. The Special Rapporteur particularly welcomes the enhanced independence of the National Human Rights Commission. She urges the Government at all levels to extend full institutional cooperation to these institutions and mechanisms, ensuring that sufficient human and financial resources are provided

for the full implementation of their mandates. Recruitment of staff from diverse ethnic and religious communities should continue to be encouraged. The Office of Missing Persons should be established swiftly and transparently.

Minorities commission

66. The Special Rapporteur also recommends that the Government establish an independent commission on minorities under the Constitution. The commission should have a clear mandate, powers, resources and autonomy, and a diverse workforce that includes representatives of minority communities. Its mandate should enable it to provide expert advice in legislative drafting and policymaking processes; advise and formulate necessary legislative changes as well as implementation measures; have an interministerial coordination role in recognition of the need to mainstream minority issues across policy areas; undertake promotional and educational activities; develop good practice guides, information resources and reports; develop campaigns and outreach relating to minority rights; conduct needs assessments to identify the needs of minority communities, monitor their situation and serve as a bridge and trust-building platform between minority communities and the Government; and facilitate arbitration, dialogue, national debate and activities to prevent and find solutions to ethnic- or religion-based tensions.

Political participation and inclusive governance

67. The overwhelming sense of marginalization felt by minorities must be addressed by taking immediate measures to ensure their participation and representation in public life, particularly in shaping decisions that affect them. Effective and meaningful participation of all groups in the political arena confers trust and legitimacy in governance and can be a pivotal element in reducing community tensions and segregation. While there are a number of ways in which political participation of minorities can be achieved, including the devolution of certain powers by means of a federal arrangement, a system of reserved seats in Parliament and facilitated participation in the electoral process of political parties representing the interests of minorities, it will be important for any future electoral reform to ensure proportional representation for all minority groups on the basis of accurate data collection and disaggregation. The modality for political inclusion must afford minorities genuine influence and not simply tokenism, which may lead to deeper frustrations.

68. The Special Rapporteur also urges the Government to consider measures aimed at ensuring that government and provincial offices, law enforcement bodies, the armed forces and education and health institutions are truly reflective of the diversity within Sri Lankan society by including members of ethnic, linguistic and religious minorities at all levels, with particular attention to those facing multiple and intersecting forms of discrimination such as women and lower caste groups. This may be achieved through mandatory quota systems, especially at the federal level, as well as targeted affirmative action in training and recruitment programmes. Separate departments within institutions established for and composed of minorities may also be a possibility.

69. The Special Rapporteur proposes that the Government, as a first step towards systematic and institutionalized inclusion, consider establishing a system of bilingual community liaison officers, to be placed in every public institution, including provincial administrations, police forces, education and health facilities and the armed forces, among others, to help overcome language barriers and to form a bridge between their respective communities and State institutions. The inclusion of women

community liaison officers of Tamil and Muslim background in the police force in the Northern and Eastern Provinces, for example, would bring immediate benefits when handling sensitive cases such as sexual and domestic violence. Such a system should be provided with the necessary resources required to fulfil the mandate.

70. The Government must be commended for initiating the constitutional reform and the reconciliation process with a participatory approach, engaging the civil society, including minority communities, through public consultations. It is important that consultations be institutionalized at every stage of these key processes while keeping the communication channel open at all times. The public must be regularly and systematically informed of the status, the timelines and the outcomes as appropriate. The Public Representations Committee on Constitutional Reform, the Consultation Task Force on Reconciliation Mechanisms and the National Human Rights Commission have drawn staff from diverse ethnic and religious groups, including women; this serves as a good practice for other offices. It will be essential that every decision-making process and mechanism inspire the confidence of all communities that their views and aspirations are included and that a sense of national ownership over the long-awaited process of truth-seeking, reconciliation and healing is being forged.

Incitement to violence and freedom of religion or belief

71. The Special Rapporteur urges the strict application of the existing legislation to bring to justice perpetrators of hate speech aiming to incite discrimination or violence as well as hate crimes. Ending impunity for those who incite ethnic or religious hatred and violence must be a priority. The newly established Inter-Religious Council constitutes a positive practice and its role in mediating between different religious and belief communities and promoting tolerance and peaceful relations should be strengthened, particularly at the provincial level. The Government, including at the local level, should also ensure full protection of all minority places of worship as well as heritage.

Linguistic rights

72. Sri Lanka has put in place an important legal and policy framework necessary for multilingualism. However, targeted and strengthened measures are necessary to enable their actual implementation, with sufficient resources. The placement of bilingual community liaison officers in every public institution, as recommended above, should facilitate overcoming the practical difficulties experienced by Tamil speakers in accessing public services as well as dealing with law enforcement and the courts. The Government should take the necessary measures to guarantee a quality education in all three languages by, inter alia, addressing the shortage of Tamil-speaking teachers.

Education

73. Entrenched segregation in the education system reinforces the notion of differences and prevents children from fostering friendships across different identities. Recognizing the role of education as the foundation of unity, understanding and acceptance of differences that will pave the way for peaceful coexistence, the Special Rapporteur believes that the reform of the education system is an important long-term project that must be set in motion without delay. Steps to achieve integration within the school system should be based upon dialogue and confidence-building across communities. Moreover, the school curriculum should be reviewed with a view to ensuring that children learn about the shared values and commonalities of their

society, together with the history, culture, religion and identity of the others and not only of their own — or the majority — communities. Religion classes should cover all religions, and could be optional. Such measures will help minimize stereotypes, prejudices and suspicions with which the different communities might currently view each other. Other suggestions made to the Special Rapporteur included religion- or ethnic-neutral names for schools and the use of English as a language of instruction with optional afternoon classes in Tamil, Sinhala and other desired languages, depending on the composition of the student body.

Targeted actions needed for Sri Lankan minorities

74. To achieve peaceful coexistence after the long, devastating civil war, a comprehensive, well-planned and well-coordinated truth, reconciliation, healing and accountability process must take place, and it cannot be done overnight. However, almost two years after the change of Government, the Special Rapporteur notes the mounting frustrations with the pace of progress. It is important for the Government to put in place some immediate, important and concrete measures to clearly demonstrate its political will and commitment to better protect the country's minorities.

75. The specific policy interventions to address the needs of different minority groups should be based on accurate data that are disaggregated by, inter alia, gender, ethnicity, language and religious affiliation. Such data are crucial to highlight the vulnerability of the different population groups, including those that face multiple forms of discrimination, and enable legislators and policymakers to establish targeted programmes. Census questions should allow open and multiple responses that enable respondents to self-identify according to their national, ethnic, religious and linguistic affiliation, including multiple identities.

76. As a matter of priority, the Government must continue and step up the release to the civilian populations of the remaining 6,124 acres of the land currently held by the military in the North as well as other lands and coastal areas occupied by the military. A proper mapping exercise of all the lands currently occupied by the military must take place, and lands currently not in use or whose use cannot be adequately justified for military purposes must be returned without delay to their rightful owners in a condition that is usable. Where private lands have been acquired without due process or compensation, these lands must be returned and/or compensated for. Demilitarization of the North and East is not only urgent for its practical implications such as the livelihood of the local population, but required for symbolic purposes. With police powers having been transferred back from the army to civilian control, it will be important for the police to reflect the ethnic and linguistic composition of the local population to overcome practical barriers and rebuild trust.

77. While the country is undergoing an important reconciliation process, with constitutional reform and transitional justice and policymaking, the devastating impact of the war and violence on psychological well-being cannot continue to be ignored. Past acts of repression of culture and expression, ethnic intolerance and discrimination, as well as the crimes and violations committed during the conflict and the prevailing impunity, have severely damaged social and cultural norms and feelings of identity, belonging and trust. Therefore, the Government should also consider supporting psychosocial programmes and counselling and support interventions to help victims, especially women, overcome the trauma, which often manifests in complex and intertwined physical, emotional and mental health complications.

78. **Intensified efforts by national authorities and the international community are required to facilitate the voluntary return of the displaced, including those evicted by LTTE in 1990, and to ensure the improvement and sustainability of returnee communities. The outstanding recommendations of the Special Rapporteur on the human rights of internally displaced persons following his visit to Sri Lanka in December 2013 (see A/HRC/26/33/Add.2, para. 56) should be implemented without further delay.**

79. **In the light of the Government's commitment to repeal the Prevention of Terrorism Act, the Special Rapporteur recommends its immediate repeal, ensuring that any new antiterrorism legislation that replaces the Act meets all relevant international standards. The cases of all security-related detainees should also be reviewed immediately with a view to their swift release if there are no elements that would merit a prosecution; alternatively, those against whom there is evidence of involvement in serious crimes should be charged.**

80. **Minority women and children are particularly vulnerable to the effects of discrimination, social exclusion and poverty and their situation merits particular, focused attention. The Government should undertake research and formulate specific, targeted programme responses as appropriate. Targeted psychosocial and livelihood assistance for women in the war-affected areas, particularly the female heads of household and former combatants, need to be strengthened. It is equally important to ensure that women's voices are systematically heard and reflected in the transitional justice process. The amended Local Government Election Act and its quota of 25 per cent of places to be given to women should also consider the inclusion of minority women.**

81. **The Special Rapporteur recommends a review of all personal laws of minority communities (such as Kandyan, Tesawalamai or Muslim law) in line with international human rights standards, especially the 1951 Muslim Marriage and Divorce Act. Such reviews should be conducted in full consultation with the community concerned, including women's groups. The supremacy of the Constitution must be guaranteed so that all fundamental rights provided for in the Constitution can be guaranteed for all without discrimination.**

82. **It will be crucial for the new plan of action for the Plantation community to be implemented with sufficient resources and with the participation of the community. The current progress of construction of houses must be continued to achieve the goal of 50,000 houses in the next five years. The Government's commitment to provide title deeds for ownership of 7 perches of land per household will also require estate management cooperation in finding and allocating suitable lands. With respect to the estates that are privately owned, the Special Rapporteur, recalling the Guiding Principles on Business and Human Rights, underscores the responsibility of private companies to respect human rights, which is complementary to the responsibilities of the Government.**

83. **The Special Rapporteur draws the attention of the Government to the recommendations contained in her report on minorities and discrimination based on caste and analogous systems of inherited status (A/HRC/31/56) and urges their implementation as appropriate.**

84. There is a lack of detailed information available regarding the overall situation of the smaller minorities. To fully understand their problems and respond appropriately, it is necessary for the Government to undertake further research of both a quantitative and qualitative nature for appropriate policy planning. The representatives of smaller minority groups should participate in a meaningful way in all stages of policy formulation, programme design and implementation of decisions that affect them.

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Report of the Special Rapporteur on minority issues on her mission to the Republic of Moldova: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on minority issues on her mission to the Republic of Moldova.

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Report of the Special Rapporteur on minority issues on her mission to the Republic of Moldova (20-29 June 2016): comments by the State*

1. This document was prepared on the basis of opinions, suggestions and comments submitted by central public administration authorities that have competence in the field of minority issues, including Ministry of Justice, Ministry of Labor, Social Protection and Family, Ministry of Education, Bureau for Reintegration, Bureau of Interethnic Relations, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Coordination Council of Audiovisual, etc. Having studied and analyzed the abovementioned report, the state institutions generally support its content.

2. In the current situation that proves the peaceful coexistence of many ethnic groups in the Republic of Moldova, some of which reside compactly in certain regions of the country, activity of the Special Rapporteur on minority issues is of special importance as it is aimed at promoting their rights and freedoms.

3. It is important to note that the Report reflects the achievements and actions taken by the Republic of Moldova to develop the system of minority rights protection at legislative and practical levels. It admits the multi-ethnic, multi-lingual and multi-religious composition of the Moldovan society; ethnic and inter-confessional relations are generally assessed as peaceful; it is noted that cases of violence, intimidation or aggression against minorities on the basis of their ethnic, linguistic, religious identity are rare. Although serious violations of human rights and freedoms of Moldovan citizens on ethnic grounds haven't been reported so far, this segment still requires special attention from both the Moldovan authorities and international organizations.

4. The report also refers to a number of problems with respect, protection and promotion of minority rights, formulated as a result of numerous consultations of the Special Rapporteur with the representatives of central public administration authorities, minority representatives, particularly in localities densely populated by them, leaders of non-governmental organizations, representatives of religious communities, and local public administration.

5. At the same time, bearing in mind that this report will be considered at the 34th session of the UN Council on Human Rights in March 2017, we present the following amendments and supplements.

III. Minority rights: legal and institutional framework

6. This section would be useful to complement with the following information on the basis of state policy in the field of minority rights protection:

7. "In the Republic of Moldova state-level coherent legislative and practical measures are taken aiming at creating a comprehensive human rights protection system, including the rights of persons belonging to national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity; and at ensuring inadmissibility of discrimination, ethnic hatred, intolerance, xenophobia, anti-Semitism and other related negative phenomena.

* Reproduced as received.

8. Drafting laws and policies in the field of inter-ethnic relations and protection of the rights of persons belonging to national minorities is a priority and represents a constant activity of the Moldovan Government.

9. During 2012-2016 there were adopted a number of long-term policy documents of universal nature, related to national minority rights, preventing and combating discrimination, guaranteeing equality.

10. Thus, the Government Action Plans for 2013-2014, 2015-2018 and the recent one for 2016-2018 (approved by the Parliament Decision No. 01 of 20 January 2016) under the separate Chapters contained priority objectives and measures focused at the national minority related issues.

11. Among other normative acts adopted by the Government that provided for the implementation through concrete actions of a balanced state policy aimed at preserving the cultural diversity and protection of cultural and ethnic identity of national minorities, in addition to the National Cultural Development Strategy "Culture 2020", we should also mention:

- National Human Rights Action Plan for 2011-2014;
- National Action Plan for the implementation of the RM-EU Association Agreement for 2014-2016, approved by the Government Decision No. 808 of 7 October 2014;

12. The legislation of the Republic of Moldova regulating the field of interethnic relations and ensuring national minority rights corresponds to the highest and recognized international standards and consists of a set of legislative and normative acts.

13. In **paragraph 18** of the Report the phrase "in the past the institution held the status of government department, which allowed it to cover a broader portfolio" should be deleted. This opinion doesn't reflect the situation adequately based on the following arguments.

14. In 2005, pursuant to Article I of the Law No. 23-XVI of 14 April 2005 "On amending the Law on Government No. 64-XII of 31 May 1990" there was a change only in the name of this body and other similar central administrative authorities of the Republic of Moldova. Under this law, the term "department" with respect to a number of central administrative authorities has been replaced by the term "other central administrative authorities", which includes bureaus, agencies, services, etc. Therefore, these changes have not resulted in downgrading of the Bureau in the status and reduction of its functions. On the contrary, currently the Bureau is a key institution in the sphere of interethnic relations with the wide-ranging powers (policy making, in particular development of a "Strategy for Interethnic Relations Consolidation in the Republic of Moldova" and the Action Plans to support the Roma population, monitoring of the current legislation in the field of minority rights protection and functioning of the languages, coordinating the implementation of international standards, to which the Republic of Moldova is a part, organization of the work of the Coordinating Council of Ethno-cultural Organizations, which is a public advisory body to the Bureau, support for statutory activities of ethno-cultural organizations of national minorities (93 organizations are accredited under the Bureau); promotion of linguistic integration of the national minorities, promotion of the state language and organization of the state language teaching for adult population; promotion of the principles of tolerance, intercultural dialogue and the Holocaust remembrance and education, prevention of discrimination, xenophobia, etc.). At the same time, as noted in the report, the Bureau experiences lack of financial and human resources.

15. In **paragraph 22** in relation to the Action Plan to support the Roma population for 2016-2020 it should be noted that the Decision of the Government that approved this Action Plan provides for that funding of activities of the Plan will be made from the state

budget allocations of the institutions responsible for its implementation as well as from other sources in accordance with the legislation in force.

16. In **paragraph 23** it would be useful to introduce relevant updated information on the process of development and adoption by the Government of the draft Strategy for Interethnic Relations Consolidation in the Republic of Moldova for 2017-2027. The Strategy is intended to improve existing legal and regulatory framework. The document sets out national mechanisms for guaranteeing respect for national minority rights, facilitating integration of national minorities in various spheres of public life, achieving interethnic harmony and consolidating interethnic relations in the Republic of Moldova. Currently, the document is under consideration of the Government of the Republic of Moldova, being prepared for approval at an upcoming meeting of the Cabinet of Ministers. The Strategy sets out long-term objectives (10 years) and tasks which stipulate implementation of the following priorities:

- participation of national minorities in public life;
- policies in relation to both the state and minority languages;
- intercultural dialogue and civic belonging to the State of the Republic of Moldova;
- Mass media.

17. Adoption of the Strategy and its subsequent implementation in three stages will allow to create favorable conditions for interethnic relations consolidation, ensuring rights of national minorities to effective participation, integration in various spheres of public life, development and use of the languages, as well as - formation of civic belonging to the State of the Republic of Moldova, promotion of diversity in society and facilitation of intercultural dialogue.

IV. Specific areas of concern regarding linguistic rights

A Education

18. Describing the field of education we consider it essential to supplement this subsection with general overview of minority language education system which reads as follows.

19. «At present, there are 3 models of minority language studying in the Republic of Moldova.

I. The first model includes schools with Russian language as language of instruction, which national minorities traditionally attend. This model totals 262 gymnasiums and lyceums/high schools.

II. The second model includes schools with Russian language as language of instruction with the Ukrainian, Gagauz, Bulgarian languages being studied as a subject 3 times a week and a new subject – History, culture and traditions of Russians, Ukrainians, Gagauz, Bulgarians with once a week tuition.

III The third model covers experimental gymnasiums and lyceums/high schools where the primary and secondary education is delivered in mother tongue: Ukrainian and Bulgarian».

20. In **paragraph 26** on the Education Code adopted in 2014 to make the following remark: «The Education Code doesn't contain any discriminatory provisions regarding national minorities, but develops some concepts provided for by the previously adopted

laws (Constitution of the Republic of Moldova, 1994; the Law on languages spoken in the Republic of Moldova of 1989; Law on the rights of persons belonging to national minorities and the legal status of their organizations of 2001; President Decrees and Government Decisions on ensuring cultural development of minorities *(Ukrainians, Russians, Bulgarians, Roma, Jews)*».

21. At the same time, to include the following updated statistics reflecting a number of schools where minority languages are taught:

Studied language	***Academic year 2008-2009***	***Academic year 2016-2017***
Ucrainian	57 schools	46 schools
Gagauz	52 schools	48 schools
Bulgarian	32 schools	30 schools
Polish	1 school	1 school
Hebrew	2 schools	2 schools
German	1 school	1 schools

22. Also, in a separate paragraph to note the following actions on Romani language studying: "An attempt has been made to introduce the Romani language teaching to Roma pupils in the Republic of Moldova. For this purpose, in 2001, 500 primers in Romani were brought from Romania to be used for Romani language teaching in localities densely populated by Roma people. But because of different Romani language dialects specific to different regions, the Romani primer has been introduced in the curriculum".

23. Taking into account concerns expressed by the Special Rapporteur on the level of state language proficiency and studying, it would be appropriate to supplement this section, in particular **paragraph 30**, or to introduce an additional paragraph on measures taken to promote the state language studying among the national minorities in particular adults: «The activity to promote the state language studying among adult population, in particular, speaking other languages, is held in cooperation with OSCE High Commissioner on National Minorities, LPAs and National Association of European Trainers in Moldova (ANTEM). During the period **2010-2015**, approximately **5,000** civil servants, doctors, teachers, economic sphere employees, policemen etc. benefited from the state language learning courses organized by ANTEM in the northern and southern districts of the republic and municipality of Chisinau. The Projects *„Language training program for national minorities in the Republic of Moldova"*, and *"Distance study of the Romanian language"* aiming at linguistic, social, cultural and professional integration of speakers of other languages were implemented. In 2015 *Distance study of the Romanian language* covered about 300 beneficiaries (including students, school managers, young specialists, young mothers, persons with disabilities) in 9 localities of the Republic Moldova. Since 2016 an innovative project *„Program on Simultaneous Learning of the Romanian and Gagauz languages"* is implemented. It is designed to draw minimum 150 children aged 5-7 years and their parents from three districts of Gagauzia (Comrat, Ceadir-Lunga and Vulcanesti) into simultaneous learning of the Romanian and Gagauz languages».

V. Religious minorities

24. In order to reflect comprehensively the situation with religious minority rights protection, we deem it necessary to complement this section with the following statistics:

«Currently, there are around 2,634 religious cults and component parts registered at national level (religious communities and institutions)».

25. We regret to note conclusions made by the Rapporteur in respect of the procedure for registration of religious organizations (**paragraph 51**) as being "lengthy and burdensome". Accordeng to the Ministry of Justice's latest statistics during 2015 till present not a single decision to deny initial registration of a religious cult and/or its component parts has been taken.

VI. Roma

26. It appears necessary to complement this section with the following information: «The status of Roma people doesn't differ from the status of other national minorities living on the territory of the Republic of Moldova. No legislative or regulatory act exists in Moldova that restricts Roma from free exercise of fundamental human rights: to life, physical and mental integrity, freedom of movement, family and private life, education, work and social protection. Roma enjoy the same rights and freedoms that are enjoyed and exercised by all other national minorities in Moldova, as guaranteed by domestic law. However, the Roma minority often faces manifestations of discrimination, negative stereotypes against their mentality among some members of the society.

27. In recent years, in the Republic of Moldova, there have been notable achievements in addressing the problems pertaining to Roma integration in the Moldovan society, to the fight against intolerance and stereotypes against this ethnic group.

28. With the support of the Bureau of Inter-ethnic Relations, national cultural movement among Roma population has enhanced, youth, business and scientific Roma leaders have move forward, degree of Roma women social participation has increased.

29. More than 40 Roma ethno-cultural public organizations operate in the country at national and local levels. The Bureau of Inter-ethnic Relations cooperates with all Roma public organizations, it supports their statutory activities, contributes to the implementation of various projects and initiatives. Leaders of 11 Roma public organizations accredited under the Bureau are members of the Coordinating Council of Ethno-cultural organizations and have their representatives in the Executive Board. It is important to note the significantly increased activity of Roma NGOs' leaders and members of their social structures in the field of education, especially education of youth, in research and publishing, in supporting the service of Roma community mediators in cooperation with state authorities and international organizations.

30. The Bureau of Interethnic Relations holds numerous awareness-raising campaigns in collaboration with ethno-cultural organizations aimed at facilitating of intercultural dialogue, promoting of cultural and linguistic diversity, overcoming of negative attitudes towards Roma.

31. In **paragraph 99** in relation to funding of the Action Plan to support the Roma population for 2016-2020 it should be noted that the Decision of the Government by which this Action Plan was approved provided for that funding of activities of the Plan will be made from the state budget allocations of the institutions responsible for its implementation as well as from other sources in accordance with the legislation in force.

32. At the same time, we deem it important that the Special Rapporteur, bearing in mind crisis and financial constraints Moldova lately faces, reflects the need of external financial assistance for effective implementation of the plan, in particular support from European funds, technical assistance projects/programmes, public-private partnerships, etc.

33. In **paragraph 68** we deem it necessary to exclude the phrase about 37 percent of the Action Plan to support the Roma population in the Republic of Moldova for 2011-2015 being actually implemented as it doesn't reflect reality. During the monitoring of the Action Plan implementation and the development of a Report on its implementation, the aim was not to determine the Action Plan implementation percentage. An analysis of implementation and failure to realize the most significant and important actions that are of paramount importance for improving socio-cultural situation of Roma people and require urgent solutions was carried out.

VIII. Media

34. It appears necessary to reflect in this section (paragraphs 81, 82, 83) the information about the amount of broadcasting in minority languages on national television. In particular, TV station "Moldova 1" broadcasts programs dedicated to minorities with an average of one hour per week. The Public Company "Teleradio-Moldova" considers this amount of broadcasting in minority languages as sufficient. These programs are complemented with programs in Russian language: news bulletins, daily (15 min. X 7) - 1 hour 45 min.; Foreign news daily (30 min. x 7) - 3:30 min.; Foreign news rerun daily - (30 min. x 7) - 3:30 min.; TV show "Antichib" for 2 hours per month 30-min. - 1 hour.

35. Furthermore, it is also relevant to mention the following information in this section: «Nowadays, on the territory of the Republic of Moldova, there are six radio stations: GRT FM, Bas FM, Albena, Pro 100 radio, Bugeac FM, FOCUS Radio and eight TV stations: TV Gagauzia, TV Bizim DALGAMEZ, Asia-Aciic, NTS, Eni Ai, BIZIM AIDINIC, BAS TV, Zona M in those regions where ethnic minorities comprise the majority of the population. NTS TV channel broadcasts programs in Bulgarian, Romanian, Russian languages and rebroadcasts programs from BNT TV channel from Bulgaria. TV Gagauzia broadcasts the Turkish TV channel TRT. Other TV channels produce their own programs in Gagauz, Romanian, Russian, Bulgarian languages. Besides radio and television mentioned above, the National Public Broadcasting Company "Teleradio-Moldova" offers several media programs in minority languages. However, the regional public company "Teleradio Gagauzia" provides TV and radio services intended for Gagauz population who live on the territory of Gagauzia.

36. Unfortunately, due to lack of proper funding, local and regional broadcasters cannot produce 100% content in minority languages and this is the reason why many of them purchase (...) broadcast programs in Russian language. Thus, during the last years, Coordinating Council of Audiovisual (CCA) has taken positive steps to support the domestic audiovisual production allocating financial resources from the Broadcasters' Support Fund to local and regional broadcasters who participated in the *Contest for audiovisual projects selection*. Thus, in 2014, 18 broadcasters produced 293 programs in Romanian, Russian, Bulgarian and Gagauz languages; in 2015 CCA allocated from the Broadcasters' Support Fund financial resources for 17 projects for the production of programs in Romanian, Russian, Bulgarian, Gagauz languages.

37. Also, the CCA permanently organizes seminars and trainings for broadcasters and journalists from the Republic of Moldova discussing intensively the rights of ethnic minorities and the attested cases on discrimination.

38. The CCA encourages and allocates financial resources for the production of programs in minority languages and on the promotion of their culture and traditions.

39. Over the last years, the CCA didn't receive any complaints regarding violation of minority rights, discrimination etc»

IX. Transnistrian region of the Republic of Moldova

40. We believe that in the absence of effective control of the constitutional authorities of the situation in the Transnistrian region, the process of implementing the recommendations made by the development partners is hindered. Thus, the effort made by the Special Rapporteur on minority issues to improve the human rights situation in Transnistria is very welcome.

41. Guaranteeing the inalienable right to education throughout the country remains difficult, as described in chapter IX of the Report. The Moldovans constitute majority of the population in the Transnistrian region, however, schools teaching in Latin script are exposed to continuous persecution by the representatives of so-called structures from Tiraspol.

42. In this regard it is proposed to supplement **paragraph 85** with a phrase which reads as follows: „Unfortunately, up to this moment, the Tiraspol de facto administration didn't take any positive actions in this regard, as evidenced by the multiple European Court of Human Rights judgments, the lack of a viable mechanism for monitoring human rights situation in the region and the breach of assumed commitments during the negotiation process".

43. Similarly, it is proposed to exclude an assumption that the alleged structures in the region have no access to the schools teaching in Latin script and, therefore, are deprived of a possibility to verify compliance of the educational process to the so-called „educational standards in the region" (**paragraph 90**). The situation is completely different, as the schools teaching in Latin script are under permanent pressure from the Transnistrian administration, such as unjustified increase in rents and the amount of the real estates, regular freezing of bank accounts, double taxation of teaching staff, constant acts of provocation against school administration, children and their parents etc. A closure to these problems requires analysis of available options, and fundamental decisions. We hope that negotiations on the Transnistrian settlement will register the expected progress.

X. Conclusions and Recommendations

44. **Paragraph 99** is to be supplemented with the following sentence: „Currently, the Ministry of Labor, Social Protection and Family examines the opportunity and readiness for ratification of the Optional Protocol to the International Covenant on the Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the rights of Persons with disabilities".

45. **Paragraph 102** is to be revised taking into account that the recommendation goes against the national legislation which regulates the functioning of spoken languages on the territory of the Republic of Moldova, namely the Law No. 3465 from 01.09.1989. Russian is used as a communication language parallel to the state language. According to the abovementioned Law, in certain localities where most of the population is Gagauz, the official languages in different fields of life are the state language, Gagauz or Russian. An extensive interpretation of these rights would exceed the commitments of the Republic of Moldova at international level.

Roma

46. **Paragraph 106** is to be supplemented with the following phrase: „This recommendation will be realized within the process of implementing the Action Plan to support the Roma population for 2016-2020".

Transnistrian region of the Republic of Moldova

47. The recommendations provided for in **paragraph 114** are considered to be legitimate as it is reiterated the need to implement the findings of UN experts who have previously visited the region and in this way these recommendations support the efforts of the Government of the Republic of Moldova to restore the violated rights and to ensure their respect in compliance with international commitments to which Moldova is a party.

48. In order to implement the proposal on establishment of a commission with minority members from the region we, consider it appropriate to set up a mechanism to monitor this commission's work by the representatives of Chisinau and relevant international organizations (UN, OSCE, Council of Europe, etc.).

49. Furthermore, it is worth mentioning that the constitutional authorities will further contribute to promotion of human rights and fundamental freedoms in the Transnistrian region, by establishing a legal framework to advance reintegration policies and to develop the interim mechanisms to solve the problems that are faced by the population and economic agents from the Transnistrian region, as well as by creating the necessary conditions for gradual reintegration of the region into unique spaces of Moldova (economic, political, social, cultural, informational, etc.).